

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

WP(C).No. 26022 of 2015 (C)

PETITIONER :

**PRINCELY,
S/O.BENADICT PERERA, "PRIYANS", CHERUNNIYOOR P.O.,
MUDIYAKODU, VARKALA, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.H.HAMZA ROWTHER
SRI.V.K.PEERMOHAMED KHAN**

RESPONDENT(S) :

- 1. ICICI BANK LTD.,
REP. BY ITS AUTHORISED OFFICER,
ICICI BANK TOWER, BANDRA-KURLA COMPLEX,
MUMBAI - 51.**
- 2. ICICI BANK LTD.,
REP. BY ITS MANAGER, THIRUVALLA BRANCH,
THIRUVALLA, PATHANAMTHITTA.**
- 3. SUDHAKARAN,
S/O.SREEDHARAN, LATHA BHAVAN, AATTUVATHALA,
NEDUMUDI, ALAPPUZHA DISTRICT - 689 573.**

**R1 & R2 BY ADV. SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

WP(C).No. 26022 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. TRUE COPY OF THE SALE DEED EXECUTED IN FAVOUR OF THE PETITIONER.**
- EXHIBIT P2. TRUE COPY OF TRUE COPY OF THE NOTICE ISSUED BY THE ADVOCATE COMMISSIONER APPOINTED BY THE CHIEF JUDICIAL MAGISTRATE COURT IN M.C.NO:46/2015.**
- EXHIBIT P3. TRUE COPY OF THE POSSESSION NOTICE ISSUED UNDER SECTION 13(4) OF THE SARFEASI ACT.**
- EXHIBIT P4. TRUE COPY OF THE APPLICATION FILED BY THE 1ST RESPONDENT.**
- EXHIBIT P5. TRUE COPY OF THE FINAL ORDER PASSED BY THE DRT, ERNAKULAM IN SA NO:166/2015.**
- EXHIBIT P6. TRUE COPY OF THE ORDER ISSUED BY THE CHIEF JUDICIAL MAGISTRATE COURT IN M.C.NO:46/2015.**
- EXHIBIT P7. TRUE COPY OF THE REQUEST SUBMITTED TO THE RESPONDENT BANK FOR OTS.**

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.A.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.26022 of 2015
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Dated this the 11th day of September, 2015

J U D G M E N T

The petitioner, who had purchased property from the 3rd respondent, is aggrieved by the steps taken by the respondent bank to recover loan amounts that were availed by the 3rd respondent by mortgaging the property that is now purchased by the petitioner. It is the case of the petitioner that he was not aware of the mortgage of the property before the respondent bank by the 3rd respondent and he is now faced with recovery steps initiated by the respondent bank against the said property. Consequently, the respondent bank initiated proceedings under the Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the 'SARFAESI Act', to recover the loan amounts. In the writ petition, the petitioners impugn the steps initiated by the respondent bank for recovery of the loan amounts.

2. I have heard the learned counsel appearing on behalf of the petitioner as also the learned Standing counsel for the respondent bank.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I note that, the sole prayer

of the petitioner is to permit him to remit the balance amounts outstanding to the bank in easy instalments. Taking into account the plea of financial hardship raised by the petitioner, I dispose the writ petition with the following directions:-

(i) The total amount outstanding to the respondent bank towards the loan availed by the 3rd respondent is stated to be Rs.14,50,379/- together with accrued interest and other charges. Accordingly, if the petitioner pays the aforesaid amount of Rs.14,50,379/- together with accrued interest in 10 equal and successive monthly instalments commencing from 30.09.2015, then further proceedings for recovery of loan amounts from the petitioner shall be kept in abeyance.

(ii) It is made clear that, if the petitioner commits a default in respect of any of the instalments, he will lose the benefit of this judgment and the respondent bank will be free to continue the recovery proceedings against him from the stage at which they presently stand.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

